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| APPLICATION NO.   | FILING DATE     | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.     | CONFIRMATION NO.        |  |
|---|-----------------|----------------------|-------------------------|-------------------------|--|
| 09/505,713  | 02/17/2000      | Wilfried Jud         |                         | 6931                    |  |
| 7   | 7590 05/07/2003 |                      |                         |                         |  |
| Fisher Christen & Sabol<br>1725 K Street NW<br>Suite 1401 |                 |                      | EXAMINER                |                         |  |
|   |                 |                      | JACKSON, M              | IONIQUE R               |  |
| Washington, D   | C 20006         |                      | ART UNIT                | PAPER NUMBER            |  |
|   |                 |                      | 1773                    | 29                      |  |
|   |                 |                      | DATE MAILED: 05/07/2003 | DATE MAILED: 05/07/2003 |  |

Please find below and/or attached an Office communication concerning this application or proceeding.

| Advisory Action    Application No.   Application No.   Application No.   Application No.   O9/905/713   JUD ET AL.     Examiner  | Application No. Applicant(s)  |  |
|--|---|--|
| Examiner   Mart Unit   Monique R Jackson   1773   1773   1774   1773   1774   1775   1774   1775   1774   1775   1 | l l   |  |
| Examiner   Monique R Jackson   1773    -The MAILING DATE of this communication appears on the cover sheet with the correspondence address THE REPLY FILED 23 April 2003 FALLS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.13 may only be either (1) a timely filed amendment of this application. A proper reply to a final rejection under 37 CFR 1.13 may only be either (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed soft or reply expires 3. months from the malling date of the final rejection.  | Advisory Action 09/505,713 JUD ET AL.   | _  |
| THE REPLY FILED 23 April 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandomment of this application. A proper reply to a final rejection under 37 CFR 1.13C may only be either. (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Rollowance (2) at timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.  PERIOD FOR REPLY (check either a) or b)  ⇒ The period for reply expires .3_months from the mailing date of the final rejection.  ⇒ The period for reply expires .3_months from the mailing date of the final rejection.  ⇒ The period for reply expires .3_months from the mailing date of the final rejection.  ⇒ The period for reply expires .3_months from the mailing date of the final rejection.  ⇒ The period for reply expires .3_months from the mailing date of the final rejection.  → The period for reply expires .3_months from the mailing date of the final rejection.  → The period for reply expires .3_months from the mailing date of the final rejection.  → The period for reply expires .4_months from the mailing date of the final rejection.  → The period for reply expires .4_months from the mailing date of the final rejection.  → The period for reply expires .4_months from the mailing date of the final rejection.  → The period for reply expires .4_months from the mailing date of the final rejection.  → The period for reply expires .4_months from the mailing date of the final rejection on the period for reply expires determining the period of the replace attending date of the final rejection.  → The period for reply expires and the period for replace attending the mention of the final rejection, even if timely filed, may reduce any examely a final final rejection and for search (see NOTE below);  (b) I have price of Appeal was filed on        | Examiner Art Unit   |  |
| THE REPLY FILED 23 April 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either. (1) at timely filed amendment with places the application in condition for allowance, (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.  PERIOD FOR REPLY (check either a) or b)  The period for reply expires or: (1) the mailing date of the final rejection.  PERIOD FOR REPLY (check either a) or b)  The period for reply expires or: (1) the mailing date of the Advisory Action, or (2) the date set forth in the final rejection, whichever is later, no event, however, will the stautory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  ONLY OFICKY THIS BOW WHEN THE FIRST REPLY WAS FILED WITHIN TYPO MONTHS OF THE FINAL REPLICION. See MPEP  Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension tee have been filed is the date for unyopes of determining the pend of extension and the corresponding amount of the fee. The appropriate extensions the value of 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in 3 body or, if checked. Any reply received by the Office determinent of the remaining date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).  The proposed amendment(s) will not be entered because:  (a) they raise new issues that would require further consideration and/or search (see NOTE below);  (b) they raise the issue of new matter (see Note below);  (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying  | Monique R Jackson 1773  |  |
| Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) at limely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.  PERIOD FOR REPLY (check either a) or b)]  3) The period for reply expires 3_months from the mailing date of the final rejection.  b) The period for reply expires 3_months from the mailing date of the final rejection. ONLY CHECK THIS 80X WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS FOR THE FINAL REJECTION. See MPEP 766.07(f).  Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extensions en heave been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extensions en under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for group originally set in the final Office action; or 2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if immely filed, may reduce any earned patent term adjustment. See 37 CFR 1.191(a)), to avoid dismissal of the final rejection, even if immely filed, may reduce any earned patent term adjustment. See 70 CFR 1.794(b), to avoid dismissal of the appeal.  2) The proposed amendment(s) will not be entered because:  (a) they raise new issues that would require further consideration and/or search (see NOTE below);  (b) they raise new issues that would require further consideration and/or search (see NOTE below);  (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  (d) they present additional claims without can | -The MAILING DATE of this communication appears on the cover sheet with the correspondence add  | lress  |
| a)  The period for reply expires 3_months from the mailing date of the final rejection. b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later.   | Therefore, further action by the applicant is required to avoid abandonment of this application. A proper repl<br>final rejection under 37 CFR 1.113 may <u>only</u> be either: (1) a timely filed amendment which places the applica<br>condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for 0  | y to a<br>Ition in   |
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| 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  2.   | b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, wh no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. 706.07(f).  Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriation date of the shortened statutory period for reply originally set in the final (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection. | on. See MPEP ropriate extension ropriate extension Office action; or |
| (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below); (b) ☐ they raise the issue of new matter (see Note below); (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.  NOTE:  | <del></del> '''   |  |
| (b) ☐ they raise the issue of new matter (see Note below); (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.  NOTE:  3. ☐ Applicant's reply has overcome the following rejection(s):  4. ☐ Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached.  6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows:  Claim(s) allowed: None.  Claim(s) objected to: None.  Claim(s) rejected: 38-53.  Claim(s) withdrawn from consideration: None.  The proposed drawing correction filed on is a) ☐ approved or b) ☐ disapproved by the Examiner.  9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s)  | 2. The proposed amendment(s) will not be entered because:   |  |
| (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.  NOTE:  3. ☐ Applicant's reply has overcome the following rejection(s):  4. ☐ Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  5. ☑ The a) ☐ affidavit, b) ☐ exhibit, or c) ☑ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached.  6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  7. ☑ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows:  Claim(s) allowed: None.  Claim(s) objected to: None.  Claim(s) rejected: 38-53.  Claim(s) withdrawn from consideration: None.  The proposed drawing correction filed on is a) ☐ approved or b) ☐ disapproved by the Examiner.  9. ☐ Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s)  | (a) They raise new issues that would require further consideration and/or search (see NOTE below);  |  |
| issues for appeal; and/or  (d)   | (b) ☐ they raise the issue of new matter (see Note below);  |  |
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| <ul> <li>4. Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</li> <li>5. The a) affidavit, b exhibit, or c request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached.</li> <li>6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.</li> <li>7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows:  Claim(s) allowed: None.  Claim(s) objected to: None.  Claim(s) rejected: 38-53.  Claim(s) withdrawn from consideration: None.</li> <li>8. The proposed drawing correction filed on is a) approved or b) disapproved by the Examiner.</li> <li>9. Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s)</li> </ul>   |   | S.   |
| canceling the non-allowable claim(s).  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows:  Claim(s) allowed: None.  Claim(s) objected to: None.  Claim(s) rejected: 38-53.  Claim(s) withdrawn from consideration: None.  The proposed drawing correction filed on is a) approved or b) disapproved by the Examiner.   | 3. Applicant's reply has overcome the following rejection(s):   |  |
| application in condition for allowance because: <u>See attached</u> .  6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  7. ☑ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows:  Claim(s) allowed: <u>None</u> .  Claim(s) objected to: <u>None</u> .  Claim(s) rejected: <u>38-53</u> .  Claim(s) withdrawn from consideration: <u>None</u> .  8. ☐ The proposed drawing correction filed on is a) ☐ approved or b) ☐ disapproved by the Examiner.  9. ☐ Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s)   |   | amendment  |
| raised by the Examiner in the final rejection.  7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows:  Claim(s) allowed: None.  Claim(s) objected to: None.  Claim(s) rejected: 38-53.  Claim(s) withdrawn from consideration: None.  8. The proposed drawing correction filed on is a) approved or b) disapproved by the Examiner.  9. Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s)  | 5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NO application in condition for allowance because: See attached.  | T place the  |
| explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows:  Claim(s) allowed: None.  Claim(s) objected to: None.  Claim(s) rejected: 38-53.  Claim(s) withdrawn from consideration: None.  8. The proposed drawing correction filed on is a) approved or b) disapproved by the Examiner.  9. Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s)   |   | e newly  |
| Claim(s) allowed: <i>None</i> .  Claim(s) objected to: <i>None</i> .  Claim(s) rejected: <u>38-53</u> .  Claim(s) withdrawn from consideration: <i>None</i> .  8. The proposed drawing correction filed on is a) approved or b) disapproved by the Examiner.  9. Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s)  |   | and an   |
| Claim(s) objected to: <u>None</u> .  Claim(s) rejected: <u>38-53</u> .  Claim(s) withdrawn from consideration: <u>None</u> .  8. The proposed drawing correction filed on is a) approved or b) disapproved by the Examiner.  9. Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s)   | The status of the claim(s) is (or will be) as follows:  |  |
| Claim(s) rejected: 38-53.  Claim(s) withdrawn from consideration: None.  8. The proposed drawing correction filed on is a) approved or b) disapproved by the Examiner.  9. Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s)  | Claim(s) allowed: None.   |  |
| Claim(s) withdrawn from consideration: <u>None</u> .  8. The proposed drawing correction filed on is a) approved or b) disapproved by the Examiner.  9. Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s)   | Claim(s) objected to: None.   |  |
| 8. The proposed drawing correction filed on is a) approved or b) disapproved by the Examiner.  9. Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s)   | Claim(s) rejected: 38-53.   |  |
| 9. Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s)  | Claim(s) withdrawn from consideration: <u>None</u> .  |  |
|  | 8. ☐ The proposed drawing correction filed on is a) ☐ approved or b) ☐ disapproved by the Exami   | ner.   |
| 0. Other:  | 9. Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s)   |  |
|  | 10. Other:  |  |
|  |   |  |
|  |   |  |

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## ADVISORY ACTION

Continuation of Item No. 5. NOTE: The Applicant's arguments filed 4/23/03 have been fully considered but are not persuasive. The Applicant continues to argue that the Examiner's interpretation of Breitler et al is incorrect, that one skilled in the art would not have reasonably interpreted the specified sections in the same manner as the Examiner, and that nowhere does Breitler et al disclose a polypropylene layer between a metal layer and a polyamide layer, and that the recitation at Col. 4 of Breitler et al only teaches polypropylene layers on the outer sides of the composite and not the outer sides of the polyamide layer and hence between the polyamide layer and the metal layer. However, as previously stated in Paper No. 14 and Paper No. 16, the Examiner maintains her position with regards to Breitler et al and specifically points to lines 36 to 44 of Column 4 of Breitler which read:

"A single or double-sided sealable composite is obtained by single or double sided coextrusion of the plastic layers with e.g. a polypropylene/polyethylene copolymer.

In that connection it is useful for the plastic layers to contain or comprise of a polyamide-based thermplastic to feature a sealing layer on at least one side i.e. <u>each layer of polyamide-based</u> thermoplastic <u>may be covered with a sealable layer on one or both sides, independent</u> of the other layers." (Emphasis added.)

Below the Examiner has included her previous statements presented in Paper No. 14:

"This recitation clearly states that each layer of polyamide may be provided on one or both sides with a sealable layer, or polypropylene per Col. 4, line 24, independent of the other layers, not that each layer of polyamide may be provided only on one side with a sealable layer such that the composite is provided with an outerlying sealable layer on one or both sides as

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interpreted by the Applicant. Hence, the Examiner maintains her position that the invention taught by Breitler et al does in fact teach the instantly claimed invention having the structure polyamide plastic layer/metal layer/polyamide plastic layer wherein each polyamide plastic layer may be provided on one or both sides with a sealable polypropylene/polyethylene layer independent of other layers by coextrusion, hence resulting in pp/pa/pp/metal foil/pp/pa/pp, and further notes that her interpretation is consistent with what is understood in the packaging art, note specifically, the previously attached Muggli which also utilizes the same language as the commonly assigned Breitler et al and further exemplifies polyethylene/polypropylene'sealable layers'(c, c¹, e and e¹) on both sides of the plastic layers (d and d¹), which are present on both sides of a central metal layer (a) (Abstract; Col. 3, line 42-Col. 4, line 2; Col. 4, line 57-8.)

Further, as stated in Paper No. 16:

"...a fair reading of Brietler et al by one having ordinary skill in the art would nevertheless lead one skilled in the art to the interpretation that a sealable or polypropylene layer can be provided on either or both sides of each polyamide layer independent of other layers. Hence, given that the description at Column 4, lines 36-44 can be interpreted both ways by one having ordinary skill in the art, the Examiner maintains her position that the Brietler et al reference serves as a teaching with regards to the instant invention."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R Jackson whose telephone number is 703-308-0428. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul J Thibodeau can be reached on 703-308-2367. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Monique R. Jackson

Patent Examiner

Technology Center 1700

May 5, 2003